

OLYMPIA J. SNOWE
MAINE
COUNSEL TO THE ASSISTANT
MAJORITY LEADER
250 RUSSELL SENATE OFFICE BUILDING
2021 224-6344

EX PARTE OR LATE

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COMMITTEES:
ARMED SERVICES
BUDGET
COMMERCE, SCIENCE, AND
TRANSPORTATION
CHAIR OF
OCEANS AND FISHERIES
SUBCOMMITTEE
SMALL BUSINESS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Commissioner Tristani:

I was recently contacted by Steve White, President of the New England 800 Company, a small toll-free call center located in Waldoboro, Maine.

Mr. White is concerned about the distribution of toll-free service access codes and the impact it would have on New England 800 and other call centers. I understand that FCC officials recently met with Mr. White and his associates to discuss this matter. The New England 800 Company is concerned primarily about the consumer confusion, misdials, and erosion of trademarks that could result from opening up additional toll-free service access codes. New England 800 would like the FCC to defer the opening of the 877 service access code until a solution to the problems it maintains are associated with the existing arrangement can be found.

As you may be aware, this is a matter of urgent importance not only to the New England 800 Company, but to many other call center companies nationwide. I have enclosed for your review a synopsis of the issue prepared by Mr. White, and the New England 800 Company's proposed "enterprise concept" solution to the toll-free service access code problem. Because I believe that Mr. White raises some very legitimate concerns that should be addressed, I ask that you evaluate and comment on New England 800's plan before issuing any decision on releasing 877 toll-free numbers.

Thank you in advance for your assistance in this important matter. Please provide me with your views and findings at your earliest convenience. I look forward to hearing how you plan to proceed.

Sincerely,


Olympia J. Snowe
United States Senator

AUBURN
TWO GREAT FALLS PLAZA
SUITE 7B
AUBURN, ME 04210
(207) 796-2481

AUGUSTA
68 SEWALL STREET, SUITE 101C
AUGUSTA, ME 04230
(207) 622-8292

BANGOR
ONE CUMBERLAND PLACE, SUITE 306
BANGOR, ME 04401
(207) 945-0432

BIDDEFORD
231 MAIN STREET, SUITE 2
BIDDEFORD, ME 04005
(207) 282-4144

PORTLAND
3 CANAL PLAZA, SUITE 601
P.O. Box 188
PORTLAND, ME 04112
(207) 874-0883
MAINE RELAY SERVICE
TDD 1-855-3323

PRESQUE ISLE
180 ACADEMY STREET, SUITE 3
PRESQUE ISLE, ME 04769
(207) 764-8124

SYNOPSIS OF NEED FOR AND PURPOSE OF FCC MEETINGS

Federal Communications Commission CC Docket No. 95-155, Toll Free Service Access Codes ("SACs"), was initiated in October of 1995 in response to the rapid depletion of 1-800 toll free numbers, and in anticipation of the opening of future toll free SACs, e.g., 1-888. The stated purpose of the proceeding was "to assure that, in the future, toll free numbers are allocated on a fair, equitable, and orderly basis [and also] to assure that the transition period during which the numbers within one toll free code are approaching full consumption and another code is being introduced is smooth, without disruption of service to existing customers or interruption in the availability of toll free numbers for new customers." *Notice of Proposed Rule Making*, 10 FCC Rcd 13692 (1995).

The Commission has considered a wide variety of issues in this proceeding, including the problems that arise when numbers are opened in new SACs that correspond to well known numbers or brands in the 800 SAC. For example, if an entity other than 1-800-FLOWERS were to obtain 1-888-FLOWERS, a number of problems arise, including, but not limited to, consumer confusion, misdials, erosion or even infringement of trademarks, etc. The Commission has referred to this as the "vanity number" issue, although we feel that term does not accurately reflect the problem and certainly does not do justice to the serious business impact involved.

In January of 1996 the Commission adopted an interim and very limited measure whereby existing 1-800 customers could request that corresponding 1-888 numbers be set aside and held in reserve (i.e., not assigned to new users) pending permanent resolution of the issue. *Report and Order*, 11 FCC Rcd 2496 (1996). In April of 1997 the Commission adopted a number of rules and policies regarding toll free numbers, but deferred the so-called vanity number issue. *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162 (1997). In July of 1997 the Commission issued a public notice seeking further comments and recommendations on how to deal with vanity numbers.

The implementation of the 888 SAC is well underway, and the opening of the 877 toll free SAC is currently scheduled for April 5, 1998. Meanwhile, the Commission still has not resolved the so-called vanity number issue.

New England 800 Company is a Maine small business. Established in 1983, New England 800 was the first in-bound telephone call center for hire in the State. Today, its ResponseTrak® Call-Centers division employs more than 125 persons and provides around the clock service seven days a week to more than thirty clients located throughout the United States.

New England 800 believes that the failure to address the vanity number issue, while allowing assignment of numbers from the 888 SAC, has already had a serious adverse impact on toll free users in general, and in particular on those who use toll free numbers as brands, in direct response marketing, etc. The interim 888 "set-aside" was too narrow in scope and not widely enough publicized, particularly harming small businesses. We believe the Commission must take immediate and decisive steps to avoid repeating this mistake in the 877 SAC and exacerbating in the 888 SAC.

For these reasons, New England 800 Company will be formally asking the Commission to stay opening of the 877 SAC pending final resolution of these issues. New England 800 Company will also be making a specific detailed proposal to the Commission for a comprehensive, equitable, efficient, and permanent solution to this problem. Please see the attached draft of New England 800 Company's proposed Enterprise solution.

NEW ENGLAND 800 COMPANY'S
PROPOSED
ENTERPRISE CONCEPT

USEFUL BACKGROUND INFORMATION

(From Common Carrier Bureau's 800/888 Home Page on the FCC's Internet site.)

AT&T developed 800 numbers in the late sixties to provide a convenient way for *businesses* to pay the toll charges for their customers who contacted them. *Businesses* quickly responded and used 800 numbers in their marketing so that their customers would contact them for *general business inquiries*. As toll free service became more popular, toll free subscribers began to find new and innovative ways to use the services. For instance, a mail order catalog company would use a toll free number to accept an order over the phone from a customer. Such use not only improved the communications between a *business* and its customer, but also provided a faster easier way for customers to place orders over the telephone.

By the mid-eighties, when the Bell System was dismantled by the Justice Department, there were over 3 million 800 numbers in service by AT&T. Also in the mid-eighties, new long distance carriers wanted to provide 800 service. These long distance carriers were assigned blocks of 800 numbers with common NXX codes. So, if you, as a new 800 subscriber, wanted to use a certain long distance carrier for your 800 service, you could only be assigned a number within the blocks of numbers assigned to that long distance carrier. There were limitations to this method of number assignment. First, it was an inefficient use of a limited numbering resource because a block of 10,000 numbers was the minimum amount of 800 numbers a long distance carrier could be assigned, whether they used all the numbers or not. Second, for a long distance carrier to compete for an AT&T 800 subscriber, that subscriber would have to change its toll free numbers when changing carriers. This was not an attractive offer for those 800 subscribers that had vanity numbers (numbers that may spell out a name or product) or subscribers who advertised their toll free numbers for many years.

In an effort to develop a more competitive toll free market for the American public, the Commission began a rulemaking proceeding in 1986. (See, In the Matter of Provision of Access for 800 Service, CC Docket No. 86-10.) Through a series of Orders issued by the Commission in that proceeding, we established the policy that is still in place today for toll free numbers. In general, as a result of that proceeding 800 numbers were "portable," that is, an 800 subscriber that wanted to change its toll free service to another service provider did not have to change its 800 number, instead the 800 subscriber could take the number with him or her or "port" the number to the new carrier.

This new technique of "porting" numbers changed the face of toll free service as we knew it. The "porting" of toll free numbers did make the toll free service market more competitive, as the Commission expected, by allowing other carriers to compete directly with AT&T for 800 subscribers- not on what numbers they could provide- but on price and service. Also, still more uses for 800 numbers were introduced. Prices were reduced so much that small businesses could now afford toll free service for their businesses; long distance carriers started offering "*personal 800 numbers*" to parents who had children away at school or elderly parents on a fixed income; paging companies began offering toll free numbers to their customers as a way for mobile businesses such as plumbers or limousine

services, to advertise the toll free number as a business office contact. Today there are over 8 million toll free numbers in service.

Within 18 months from when portability for 800 numbers began in 1993, very few of the 7 million 800 numbers were left for new subscribers. The telecommunications industry assigned another code for toll free service subsequent to 800 numbers. They chose 888 as the next toll free code which introduced approximately 8 million new toll free numbers.

The Commission began a new proceeding by issuing a Notice of Proposed Rulemaking in October 1995 to address new issues that arose with the introduction of 888 toll free numbers (See, *In the Matter of Toll Free Numbers*, CC Docket No. 95-155, FCC No. 95-419, FCC Rcd 10 13962 (October 1995)). In January 1996, the Common Carrier Bureau issued the first Order in that proceeding to address certain issues that needed immediate attention so that 888 numbers would be in service by March 1, 1996 (See, *In the Matter of Toll Free Numbers*, CC Docket No. 95-155, DA 96-69 11 FCC Rcd 2496 (January 1996)).

(From FCC Notice of Proposed Rulemaking, October 5, 1995.)

Today, toll free telephone numbers in the United States can be identified by their common 800 service access code.¹ These numbers comprise a finite and very valuable public resource, one that satisfies an important *business* function and that is being used increasingly to meet consumers' *personal* needs.² Recently, the industry organizations responsible for administering the system for assigning 800 numbers have informed us of the rapidly accelerated pace at which these numbers were being reserved and used by customers. This pace of consumption even posed, at one time, the possibility of the 800 toll free numbers being totally depleted before an additional toll free code could be introduced. The recent experience with 800 toll free numbers leads us to believe that it is necessary to initiate a rulemaking proceeding through which we seek to assure that, in the future, toll free numbers are allocated on a fair, equitable, and orderly basis. We also seek to assure that the transition period during which the numbers within one toll free code are approaching full consumption and another code is being introduced is smooth, without disruption of service to existing customers or interruption in the availability of toll free numbers for new customers.

1. To develop a record and implement sound policy in this area, this Notice of Proposed Rulemaking ("NPRM") seeks comment on proposals to: (1) promote the efficient use of toll free numbers; (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code; (4) guard against warehousing of toll free numbers; and (5) determine how toll free vanity numbers should be treated.

¹ The 800 service access code may also be referred to as a Numbering Plan Area ("NPA").

² Toll free service has proven successful to *businesses*, particularly in the areas of customer service and telemarketing, because it provides potential customers and other persons with a free and convenient means of contacting those businesses. *Personal* toll free numbers are also becoming an increasingly popular means of communication. For example, parents can give their toll free number to a child away at college, enabling that child to call home free of charge at any time.

II. BACKGROUND

2. In 1967, AT&T established the 800 service access code. Unlike traditional telephone calls, where the calling party paid for the call, the toll charges for completed 800 calls were paid by the called party (*i.e.*, the 800 subscriber). In addition, the called party's telephone number did not depend on the specific geographic location of that party, as was the case with regular telephone numbers. As the years progressed, these toll free and non-geographic characteristics proved so successful to *businesses* that the concept was adopted on an international basis.

IV. DISCUSSION

C. Warehousing of Toll Free Numbers

34. To understand why 800 numbers have been consumed so much more quickly than the industry had initially anticipated, the Bureau has been investigating who was taking these numbers and for what uses. As a result of the Bureau's investigation, we find that toll free subscribers include *business* subscribers, *residential or personal* subscribers, and *access* subscribers, a term we use to describe those using voice mail and paging services.

(From FCC Report and Order, January 25, 1996.)

III. DISCUSSION

A. VANITY NUMBERS

1. Background

6. In the NPRM, the Commission defined a vanity number as "a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder."³ The NPRM broadened the definition of vanity numbers for the purpose of this proceeding to include any numbers in which the holders have a particular interest, be it economic, commercial or otherwise.⁴

Comments

a. Definition of Vanity Numbers

8. Various commenters suggest differing definitions for vanity numbers. Ameritech, for example, suggests six possible categories of vanity numbers: (1) numbers corresponding to letters

³ Id. at para. 35. Examples of vanity numbers given in the NPRM include "1-800-THECARD" and "1-800-FLOWERS." Id.

⁴ Id. Numbers included in this category consist of toll free numbers dedicated for emergency recall situations or consumer inquiries. Id. For example, *companies* producing over-the-counter medications often include a customer service number on the packaging.

spelling a subscriber's product (e.g., "1-800-FLOWERS"); (2) numbers corresponding to letters spelling a subscriber's name (e.g., "1-800-HOLIDAY"); (3) numbers that begin with "4" or "2" and end with a product or subscriber's name (e.g., "1-800-4-TRAVEL"); (4) numbers for which the last four digits spell a product or subscriber's name; (5) numbers that are easily remembered; and (6) numbers that have been heavily marketed. The 800 Users Coalition asserts that product information numbers or reservation numbers for hotels and airlines that generate large volumes of traffic, should also be included within the definition of vanity numbers. SWBT contends that a logical extension of the definition would include every emergency and hot line number. LDDS Worldcom ("LDDS") asserts that the definition should be broadened beyond mnemonic terms to recognize that the digits themselves may be of value to the toll free subscriber.

9. AT&T maintains that RespOrgs should determine which of their 800 numbers qualify as vanity numbers, while LDDS asserts that toll free subscribers should define the ultimate value of their numbers. AirTouch Paging ("AirTouch") declares that there is no fair means of determining what constitutes a vanity number, while Personal Communications Industry Association ("PCIA") states that the Commission definition is overly broad and "precludes meaningful comment." As part of its proposed plan for 888 network implementation, the SNAC defines a process that allows RespOrgs to contact their current 800 subscribers to see which numbers those subscribers might want replicated in 888. The criteria used to determine which subscribers would be contacted is left to the discretion of each RespOrg. Once the subscriber base is identified, each RespOrg would be required to compile a computer tape containing requested numbers. The tapes would then be sent to DSMI who, after conducting certain verification procedures, would mark these numbers for the "unavailable" status. The polling process was scheduled for completion in mid-December.

10. Commenters addressing the question of how many existing 800 numbers would be classified as vanity numbers arrive at widely varied estimates of the potential pool. SNAC, for example, conducted a survey indicating that 24% of existing 800 numbers were identified as vanity numbers. SNAC's survey also indicated that that same percentage of subscribers would want to replicate their numbers in 888. TLDP Communications, Inc. ("TLDP"), considering as vanity numbers only those that translate into names or words, estimates the quantity at between 10% and 20%, using a "brief mathematical analysis." The 800 Users Coalition used data collected from coalition members, holding approximately 14,000 800 numbers, and from the AT&T Toll Free Directory, containing 180,000 published 800 numbers, to arrive at its 5% to 6% figure. The 800 Users Coalition also noted that high volume numbers face the same problems as vanity numbers and consequently should be afforded the same protections as vanity numbers. Ameritech contends that it is virtually impossible to estimate the scope of vanity numbers because the definition is so broad and subjective.

11. In a letter dated January 18, 1996, DSMI informed the bureau that RespOrgs had requested to have approximately 310,000 888 numbers protected, thus providing additional evidence of the large number of 800 numbers that would be classified as vanity numbers.

3. Discussion

⁵ Ameritech Comments at 30. See also LDDS Comments at 13 (impossible at this time to estimate the quantity of vanity numbers); Bell Atlantic Comments at 7 (no way of knowing the quantity of vanity numbers currently in use because Bell Atlantic does not know how its customers are using their numbers).

THE ENTERPRISE CONCEPT

12. Defining vanity numbers is a daunting undertaking. Some numbers are valued for their mnemonic equivalent, while other numbers are valued for, among other things, the fact that their digits are easily memorized. This Report and Order will address only those issues essential to assuring the 888 SAC can be opened to the general public on March 1, 1996. We propose, therefore, to assure interim protection for all equivalent 888 numbers designated by current 800 subscribers by setting those 888 numbers aside during the initial 888 reservation period. We find that the only numbers ineligible for such treatment are 888 numbers equivalent to *personal* or *residential* 800 numbers. We find that, in contrast to other 800 subscribers, *personal* subscribers have *no commercial interest* in their 800 numbers that competitors might seek to undermine.⁶ The determination as to whether a subscriber is a residential or commercial subscriber shall be determined by the terms of the 800 tariff under which a subscriber is taking service. Consequently, only *commercial* users have any potential right of protection.

13. Based on DSMI's January 18th letter, we estimate that approximately 310,000 numbers will be eligible to be set aside during the initial 888 reservation period. We note, however, that this estimate may grow in light of the actions taken below where we request that RespOrgs continue to identify their 800 subscribers that may wish to have their numbers replicated in 888. As discussed more fully below, we will defer, subject to one modification, to that polling process to identify those numbers that shall be set aside.

14. At this time we do not decide whether these numbers ultimately should be afforded any permanent special protection or right. We arrive at this conclusion because in light of our decision to have all 888 numbers corresponding to vanity numbers classified as unavailable, a decision about permanent protection is not essential to the opening of the 888 code. We note, however, that postponing the decision will minimize consumer confusion during the initial transition to the 888 service access code. That is, by affording special rights at this time, consumers may wrongly assume that all 800 and 888 numbers are interchangeable. Such a result may seriously undermine the public awareness and education efforts now underway to inform consumers of the new 888 toll free code.⁷ Deferring the decision on special rights will permit the Commission to consider fully the consequences of a final decision on the fair, equitable, and orderly allocation of toll free numbers, as well as the economic ramifications of that decision to the current 800 subscribers seeking replication in 888. We anticipate that the Commission will resolve the vanity number issue and will identify what set of numbers, if any, is to receive permanent protection, as well as the scope of that protection, within the year.

⁶ We anticipate that 800 service providers will act promptly in resolving and/or correcting billing errors experienced by personal 800 users after the deployment of 888.

⁷ In the NPRM, the Commission noted that both the Commission and the telecommunications industry have begun educational initiatives in an effort to assure that the public is fully informed of toll free 888. NPRM at para. 49. The NPRM sought comment on whether further efforts are necessary to improve public awareness of the introduction of 888. Id. This issue will be addressed in a subsequent Order.

(From FCC Second Report and Order, April 11, 1997.)

III. DISCUSSION

A. EFFICIENT USE OF TOLL FREE NUMBERS

2. Warehousing

b. Warehousing as an Unreasonable Practice

(2) Discussion

3. Section 201(b) of the Communications Act provides that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, *shall* be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is *hereby declared to be unlawful*."⁸ In addition, § 201(b) states that "all practices" shall be just and reasonable and "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the Communications] Act."⁹

⁸ 47 U.S.C. § 201(b).

⁹ *Id.*; see also 47 U.S.C. § 205(a) ("the Commission is authorized and empowered to determine and prescribe . . . what . . . practice is or will be just, fair, and reasonable . . . and to make an order that the carrier or carriers shall . . . conform to and observe the . . . practice so prescribed").

USEFUL FACTS EXTRACTED FROM THE ABOVE

1. AT&T created 800 numbers for *business* subscribers.
2. AT&T, the Justice Department, and the FCC took steps which greatly enhanced the 800 service making it much more attractive to *businesses*.
3. According to the FCC, 800 numbers were used almost exclusively by *commercial or business* subscribers for more than a quarter of a century.
4. The Commission reports that *personal, residential, and access* uses of 800 numbers began after portability was introduced in 1993.
5. The Commission found that within eighteen (18) months of introduction of portability, very few 800 numbers were left for new subscribers. 800 numbers had been consumed much more quickly than initially anticipated.
6. The Commission has defined a vanity number as a telephone number for which the letters associated with the numbers spell a name or word of value to the user. The Commission recognizes that some numbers are valued for their mnemonic equivalent, while other numbers are valued for, among other things, the fact that their digits are easily memorized. The definition was broadened to include any numbers in which the holders have a particular interest, *economic, commercial* or otherwise.
7. The Commission linked vanity numbers to *business* users, finding that *personal* subscribers have *no commercial interest* in their 800 numbers and that only *commercial* users have any potential right of protection for vanity numbers.
8. The Commission repeatedly found clear and distinct practical and economic differences between two rather obvious classes of uses: 1) *Commercial or business* uses of 800 numbers and 2) *Personal, residential, or access* uses.
9. Information available to the Commission at the time of the January, 1996, Report and Order, indicated the supply of 888 numbers might be depleted rapidly, especially in light of the suppression or set-aside of 888 replicas of 800 vanity numbers for *businesses*.
10. The Commission gave *business* subscribers reason to expect that by the end of 1996, issues regarding protection of economic and *commercial* rights in toll-free numbers would be resolved. That is, within ten (10) months of 888 number activation.
11. Twenty-three (23) months have past since 888 toll-free service was introduced. The Commission has not yet resolved the vanity number and replication issues.
12. The Commission now wants to introduce 877 numbers with no protection of the economic and *commercial* rights *businesses* have in similar 800 and 888 numbers.
13. The Commission is empowered, perhaps obligated, to declare as unlawful any practice or regulation which is either unjust or unreasonable.

THE ORIGINAL ENTERPRISE NUMBERS

1. Enterprise Numbers of the 1950s and 1960s were 4-digit, pre-approved, operator-assisted, collect, long-distance, telephone numbers. They were expressed in the format: "Enterprise XXXX".
2. To place a call to an Enterprise Number, the user called the long-distance operator and asked for Enterprise (or Zenith in some areas) XXXX. The operator would check a flip-chart at his or her side to find the translation number, and would complete the call to the actual number, but reversing the charge to the called party without asking that the charges be accepted.
3. These numbers worked just like 800 numbers do today; the call went through with the called party paying for it on his or her regular line. The only difference was the call could only be placed with the assistance of a long-distance operator.
4. Businesses that wanted an Enterprise number went to the phone company (then there was only AT&T as a long-distance carrier) and the number was assigned. It was circulated to all the various telephone companies so that operators everywhere knew what number to actually connect you with when you asked for Enterprise XXXX.
5. Operators had all the very common Enterprise/Zenith numbers (such as airline reservations systems and hotel reservation systems) in their flip chart of frequent numbers. If it was a less common Enterprise/Zenith number, then your long distance operator put you on hold and made an inquiry from the 'Rate and Route Bureau' in Mount Morris, IL, before routing your call.

THE NEW ENTERPRISE NUMBERS

Proposal

6. The Federal Communications Commission has already found that in reality, significant practical and economic differences exist between two quite distinct categories of uses of toll-free numbers: 1) *Commercial, or business* uses and 2) *Private, personal, residential, or access* uses
7. New England 800 Company respectfully submits this proposal that these differences, together with the heritage of Enterprise numbers, be recognized as forming the basis for establishment of two separate categories of toll-free use: appropriately named "Enterprise Numbers" and "Communicator Numbers".
8. To qualify for an Enterprise Number, a prospective subscriber will be required to demonstrate that the application for which the number will be used meets all of the conditions listed below in the ENTERPRISE column. A proposed use that meets any one of the conditions listed below in the COMMUNICATOR column will, by definition, not qualify as an Enterprise Number.

ENTERPRISE - 800 & 888 Assigned only if <u>all</u> conditions below are met.	COMMUNICATOR - 877, 866, 855, 844, etc Assigned if any <u>one</u> condition below is met.
- For commercial, business, or philanthropic communications; including profit, not-for-profit, and non-profit subscribers.	- For private, personal, residential, or access communications; regardless of the nature of the subscriber (business or otherwise).
- Application must allow "many-to-one" caller accessibility. Must allow anyone to call. PINs are not permitted.	- For communications uses limited to "one-to-one" or "few-to-one" caller accessibility. PINs may be used.
- Must be published in all applicable public directory listings, and made available for use by the general public, throughout the entire provisioned access area	- For limited access by individuals, groups, or other entities with whom, for whom, or to whom the subscriber has communicated the number. May not be published to or for the general public.

Elaboration

9. Existing 800 Enterprise uses to be given immediate right of first refusal for installation of 888 "replicas" still suppressed or set aside.
10. Subscribers of bona fide, existing 800 and 888 Enterprise applications may elect to continue use of numbers assigned, and/or subscribe to additional or replacement numbers in the Enterprise group.
11. Existing 800 and 888 Communicator applications must be moved to 877, 866, or other non-enterprise SACs. Procedures and timing to be followed would be similar to those used when existing "regular" area codes are split, adding a new area code. Moves would be staged so as not to cause undue hardship on carriers, RespOrgs, subscribers, users, or other parties.
12. Following appropriate transitional periods, 800 and 888 numbers formerly used for Communicator applications would be released to the pool of available Enterprise Numbers.
13. New requests for toll-free numbers would begin to follow the above Enterprise/Communicator criteria immediately. 800 and 888 numbers to be assigned only for Enterprise applications. 877, 866, and other new SACs to be assigned, as needed, for Communicator applications only.
14. Should a subscriber to an Enterprise Number also require a toll-free number for a Communicator application, the subscriber may not use the Enterprise Number for the new purpose. The subscriber must request assignment of a new Communicator Number for the new purpose.
15. This does not mean that Enterprise Numbers cannot point to pagers, fax machines, or cell phones. Each proposed use of an Enterprise Number must meet all conditions in order to qualify. Where a pager number is used primarily for business purposes; is made available for dialing by anyone and everyone in the general public; and is published in all appropriate directories for the service area for which the number is provisioned; then that use might well qualify as an Enterprise use. The

requirement that a caller know a secret password, or PIN, would disqualify a use from being categorized as Enterprise and require that it be categorized as Communicator.

16. Should a subscriber to a Communicator Number also require a toll-free number for a bona fide Enterprise application, the subscriber may not use the Communicator Number for the new purpose. For example, a number assigned to my personal pager cannot suddenly be treated as an Enterprise Number and published. That Communicator number may well conflict with a similar number already in use for an Enterprise application, or prevent the proper use of a similar Enterprise Number yet to be assigned. The subscriber must request assignment of a new Enterprise Number for the new purpose.
17. When the original use for which a subscriber requested either an Enterprise Number or a Communicator Number changes such that the use no longer meets conditions for that class of number, then the subscriber must retire the number and release it back to the pool of available numbers. As an alternative, the subscriber may simply use the number for another application that qualifies for the class. In other words, when a number is no longer needed, it must be released following normal procedures already in place.

Discussion

18. From 1967 to 1993, the FCC and AT&T (later joined by other long-distance carriers) took important steps that provided critical incentives which were designed to increase business use of 800 numbers. As a direct result, businesses invested heavily, year after year, in the wise and wide acquisition, dissemination, and promotion of their own (and thereby all other) 800 numbers:
 - a. 800 numbers replaced Enterprise numbers, which had allowed a few businesses to pay for long-distance calls from their customers, thereby expanding their marketplaces.
 - b. 800 numbers brought direct distance dialing (DDD) convenience, speed, and simplicity to the Enterprise number concept.
 - c. 800 numbers made it as easy for consumers to call businesses located far away as it was to call their friends and family.
 - d. When 800 numbers finally became available from multiple long-distance carriers, the prices began to drop. 800 numbers were making even more sense for even more businesses.
 - e. But for many 800 subscribers one drop in price stood out, above all others. This price change had a subtle, but far-reaching, impact on the accelerating growth of 800 number utilization. MCI cut AT&T's monthly, recurring charge for "single-number service" from \$300.00 per month to zero. Single-number service was the feature that allowed a business to publish the same 800 number for intrastate traffic as was published for interstate calls. AT&T quickly followed, offering single-number service at no charge.

This price change was of vital interest to direct-response marketers who understood the importance of limiting decisions when reaching out for prospects. They understood that even a momentary confusion about which number to dial (this one for State XX, or this other one for everyone else) presented a decision which would delay or deter many prospects from becoming customers. This price change dropped a key barrier to increased investment in 800 numbers.

- f. Next, the FCC and long-distance carriers moved the translation or routing databases from each long-distance carrier's network, to a single separate entity. This allowed 800 numbers to become portable. Now, for the first time, most long-distance carriers could compete on a level playing field for our business. Now, for the first time, should a subscriber become unhappy with the price or service received for their 800 number, they could simply move it to another long-distance carrier.
 - g. 800 numbers had become valuable assets to many businesses. Objections from the accounting department were fading rapidly about ever increasing investments being made in the acquisition, dissemination, and promotion of 800 numbers. It was clear to all that as long as the bills were paid, 800 numbers would remain the exclusive asset of the subscriber.
 - h. Then, just three years ago, along came 888 numbers. For the first time, it would be possible for a competitor to publish anywhere in North America a toll-free number identical to another subscriber's, with the exception of just 2 digits. For many small companies, especially, 800 numbers were now threatened. Publication of nearly identical numbers by other businesses, whether competitors or not, would seriously diminish the value of critical telephone call brands. However, in its "Report and Order" of January, 1996, on the matter of so-called "vanity" numbers, the FCC provided reassurance. "We anticipate," they said, "that the Commission will resolve the vanity number issue and will identify what set of numbers, if any, is to receive permanent protection, as well as the scope of that protection, within the year."
 - i. Two years have past. The FCC has not dealt with the "vanity number issue in a timely or reasonable manner. Now, the Commission is poised to perpetuate every subtle inequity, as well as every major flaw, by introducing yet another toll-free area code: 877.
 - j. If the Commission follows this proposed course of action, it will so muddy the water of "vanity numbers" and 888 set-asides that the issues will then become incredibly more difficult to resolve. It appears the Commission is laying the groundwork to deny right of first refusal for 888 replicas to the very businesses who built this segment of our industry.
19. For more than a quarter of a century, it was the investment of US businesses that linked the concept of FREE long-distance dialing with the toll-free area code, 800. It took literally billions of advertising impressions, across more than two and one-half decades, to firmly establish in the minds of consumers their understanding and acceptance of the concept of toll-free dialing, reaching businesses located outside their immediate calling area.

Every space ad in a periodical featuring an 800 number; every catalog and direct-mail flyer with an 800 number; every milk carton; every infomercial; every radio and television ad appealing to the listener or viewer to take immediate action contributed to the cause. And for more than twenty-five (25) years, every ad took pains to remind the prospective customer, again and again, that calls to 800 numbers were FREE.

Many still do.

Ed McMahon and Colonial Penn still remind callers seeking information about insurance that the call is FREE, and they do this four times in each television ad. Today, more advertising space and more air-time are still devoted to reminders that the call is free, than are devoted to assurances that a salesman will not call.

20. The underlying technology of 800 numbers may have been conceived by an employee of AT&T, but it was this phenomenal investment by key sectors of American enterprise that brought the concept to the attention, and to the comfort, of the consumer. Two major contributors were the reservations industry, and the direct-response marketing industry. For decades, calls to 800 numbers were directed exclusively to businesses; often to "multi-seat" facilities where, consumer were assured, "Operators are standing by..."

Even in the late '80s, AT&T still referred to the businesses that installed these 800 numbers as *reservation centers*. Though, by then, many call-centers were employed exclusively for receiving and processing requests for literature or orders for merchandise.

21. It is neither too simplistic nor merely self-serving to assert, "We were here first." Business subscribers to 800 numbers built this industry. Good, old-fashioned American enterprise made it happen. They deserve to have their investment protected. It must be protected. And it can be. It's simple. 800 numbers were, and should be again, for the exclusive use of business Enterprise applications.
22. Personal, residential, access, and all other non-enterprise applications should have ready access to toll-free service, but not using the 800 area code.